

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

<b>In re:</b>	<b>:</b>	<b>MDL Docket No. 4:03CV1507-WRW</b>
	<b>:</b>	<b>4:05CV00546</b>
<b>PREMPRO PRODUCTS LIABILITY</b>	<b>:</b>	
<b>LITIGATION</b>	<b>:</b>	
	<b>:</b>	
	<b>:</b>	
<b>HELEN HILL</b>	<b>:</b>	<b>PLAINTIFF</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>WYETH, et. al.</b>	<b>:</b>	<b>DEFENDANTS</b>

**ORDER**

Pending are Defendants' *Daubert* Motion to Exclude Testimony of Dr. James Waldron (Doc. No. 358), *Daubert* Motion to Exclude Testimony That Short-Term Hormone Therapy Use Can Cause Breast Cancer (Doc. No. 81), and Motion for Summary Judgment Re: General Causation (Doc. No. 74). Plaintiff has responded to each.<sup>1</sup>

Also pending are Defendants' Motions to Strike Punitive Damages (Doc. Nos. 67, 78). Plaintiff has responded,<sup>2</sup> and Defendants have replied.<sup>3</sup>

**1. Exclude Testimony of Dr. James Waldron**

Dr. Waldron is a diagnostic surgical pathologist who, according to Plaintiff, will give opinions on general causation and the pathology of Plaintiff's breast cancer.<sup>4</sup> Wyeth argues that Dr. Waldron is a partisan witness (based on mistakes made during his deposition and his testimony in other trials), and that his methodology is flawed because he reviewed only select

---

<sup>1</sup>Doc. Nos. 373, 301, 360, 369.

<sup>2</sup>Doc. Nos. 145, 148.

<sup>3</sup>Doc. Nos. 167, 179.

<sup>4</sup>Doc. No. 373.

photographs of pathology slides when he diagnosed Plaintiff's breast cancer type as "mixed-ductal-lobular."<sup>5</sup>

Although interesting, it seems to me that Wyeth's assertions about partisanship are simply fodder for cross-examination. With regard to the methodology of Dr. Waldron's diagnosis, Wyeth contends that Dr. Waldron reviewed only select pictures of pathology slides -- pictures that allegedly supported a preconceived diagnostic result -- when making his diagnosis, and therefore did not follow standard diagnostic practices. However, in both his deposition and subsequent affidavit, Dr. Waldron testified that he diagnosed Plaintiff's breast cancer "based on the full contents" of the pathology slides, rather than pictures of the slides.<sup>6</sup> That said, I cannot conclude that Dr. Waldron's methodology was flawed. Wyeth's argument regarding the accuracy of these selected photos appears to be more of an admissibility issue of specific exhibits rather than a *Daubert* issue.

Based on the findings of fact and conclusions of law above, Defendant's *Daubert* Motion to Exclude Testimony of Dr. James Waldron (Doc. No. 358) is DENIED.

## **2. Exclude Testimony That Short-Term HRT Use Can Cause Breast Cancer**

Defendants assert that there is "no valid scientific evidence that hormone therapy, when used for less than five years, causes breast cancer," and that the WHI reported a "statistically significant risk of breast cancer only after 5.6 years of use . . ."<sup>7</sup>

However, Plaintiff's experts apparently contend that short-term HRT use can cause breast cancer, and rely on the Million Women Study as supportive authority. Although Defendants

---

<sup>5</sup>Doc. No. 359.

<sup>6</sup>Doc. No. 373, Exs. 1 and 2.

<sup>7</sup>Doc. No. 82.

refer to many studies that have a different conclusion, this, again, goes to the weight of the evidence and credibility of the experts; such issues are not for me to decide. Furthermore, Defendant's have presented no evidence that the Million Women Study is not a reliable study for Plaintiff's position -- they simply point to other studies that support their position.

Accordingly, Defendants' *Daubert* Motion to Exclude Testimony That Short-Term Hormone Therapy Use Can Cause Breast Cancer (Doc. No. 81) is DENIED.

### **3. Summary Judgment Re: General Causation**

As Defendants point out in their brief, this motion was based on the Motion to Exclude Testimony That Short-Term Hormone Therapy Use Can Cause Breast Cancer. Since that motion was denied, this motion (Doc. No. 74), too, is DENIED.

### **4. Strike Punitive Damages**

Defendants' Motions to Strike Punitive Damages (Doc. Nos. 67, 78) are DENIED without prejudice. These motions may be re-filed closer to the trial date.

IT IS SO ORDERED this 7th day of August, 2008.

/s/ Wm. R. Wilson, Jr.  
UNITED STATES DISTRICT JUDGE